IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 7401 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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CHANDRAKANT GUNVANTRAY PANDYA & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR RC KAKKAD for Applicant(s) : 1 - 2.
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR RJ GOSWAMI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/09/2007

ORAL JUDGMENT

1. By way of this petition under Section 482 of the Criminal Procedure Code, the petitioners original

accused have prayed for an appropriate order to quash and set aside the FIR being CR No.I -255/2007 registered with Vejalpur Police Station for the offences punishable under Sections 498(A), 323, 294(b), 506(1) and 114 of the Indian Penal Code read with Sections 3 and 7 of the Dowry Prohibition Act, 1961.

2. Respondent No.2 – wife of petitioner No.1 has filed the FIR being CR No. 255/2007 against the petitioners – original accused for the offences punishable under Sections 498(A), 323, 294(b), 506(1) and 114 of the Indian Penal Code read with Sections 3 and 7 of the Dowry Prohibition Act, 1961 with the Vejalpur Police Station alleging inter-alia that marriage of the complainant was solemnized with petitioner No.1 at Rajkot before 20 years and out of the marriage, they have got two daughters. It is further alleged that for five years after the marriage, there was no problem. However, subsequently, petitioner No.1 demanded Rs. 2 lacs from the father of the complainant and as the same was not paid and not possible to manage for Rs.2 lacs, both the petitioners started harassing the complainant and started giving

physical and mental torture. It was further alleged that apart from that petitioner No.1 – husband was having illicit relation with some other lady and when the complainant objected to it, she was ill-treated and beaten. Therefore, since last two years, she has come to reside with her parents. It is further alleged that maintenance case is going at Krishi Bhavan, Family Court, Ahmedabad and on even adjournments they are coming to Paldi, Ahmedabad and on every date of adjournments they are giving threat to the complainant and pressurize her to withdraw the case. Thus, it is alleged that the petitioners have committed offences punishable under Sections 498(A), 323, 294(b), 506(1) and 114 of the Indian Penal Code read with Sections 3 and 7 of the Dowry Prohibition Act, 1961. It is to be noted that the said complaint has been filed on 13.06.2007 at Vejalpur Police Station, Ahmedabad. Being aggrieved and dissatisfied with the same, the petitioners have preferred the present application under Section 482 of the Cr.P.C. for the aforesaid reliefs.

3. Mr.N.D.Nanavati, learned Senior Advocate appearing on behalf of the petitioners – original

accused has submitted that alleged offences if at all committed by the petitioners, then also it is committed at Rajkot, therefore, Vejalpur Police Station and the concerned Court at Ahmedabad has no territorial jurisdiction to entertain the FIR. It is further submitted that the petitioners are residing at Rajkot and even petitioner No.1 and original complainant were also residing / staying at Rajkot after marriage till she left house of petitioner No.1 and went to stay with her parents at Ahmedabad and considering the averments and allegations in the complaint, the entire cause of action has arisen at Rajkot and only with a view to harass the petitioners, FIR has been lodged at Vejalpur Police Station, Ahmedabad within whose local jurisdiction no offences haven taken place. Therefore, it is submitted that as Vejalpur Police Station has no territorial jurisdiction to inquire offences alleged, same requires to be quashed and set aside. Mr.Nanavati, learned Senior Advocate has made it clear that they are not pressing for quashing the complaint in its entirety. It is further submitted by him that when at the initial stage the petitioners have come to the Court pointing out that Vejalpur Police Station has no

jurisdiction and consequently the Court at Ahmedabad would not have any jurisdiction then why unnecessary to continue investigation by the I.O. who has no jurisdiction. Therefore, it is requested to quash the impugned complaint and relegate the complainant to file complaint before the concerned Police Station having local jurisdiction where offences alleged to have taken place. Mr.Nanavati,learned Senior Advocate has relied upon decisions of the Hon'ble Supreme Court in the case of ***Sujata Mukherjee (Smt.) v/s. Prashant Kumar Mukherjee*** reported in *(1997) 5 SCC 30*;***Satvinder Kaur V/s. State (Govt. of NCT of Delhi) and Anr.*** reported in *(1999) 8 SCC 728*; and ***Y.Abraham Ajith and Ors. V/s. Inspector of Police, Chennai and Anr.*** reported in *(2004) 8 SCC 100*. Mr.Nanavati, learned Senior Advocate has heavily relied upon para 8 of the decision of Hon'ble Supreme Court in the case of ***Satvinder Kaur (supra).*** Relying upon aforesaid decision and Sections 156 and 180 of the Cr.P.C., Mr.Nanavati, learned Senior Advocate has requested to quash the impugned FIR and/or transfer the investigation / FIR to the police station having jurisdiction to inquire into the offences alleged in the FIR i.e. Rajkot police Station.

4. On the other hand Mr.R.J.Goswami, learned Advocate appearing on behalf of the original complainant has submitted that considering the averments and allegations in the complaint, it cannot be said that no cause of action has arisen at Ahmedabad. It is submitted that it is alleged and averred in the complaint that as and when there is adjournment in the maintenance case at Ahmedabad, the petitioners used to come their and threaten the complainant to withdraw the case and therefore, it is alleged that offence under section 506(2) is committed. Therefore, when part cause of action has arisen at Ahmedabad, FIR is rightly filed with the Vejalpur Police Station and therefore, it is submitted that FIR is not required to be quashed and/or transferred to the Police Station at Rajkot. He has relied upon the decision of the Hon'ble Supreme Court in the case of ***Sujata Mukherjee (Smt.) v/s. Prashant Kumar Mukherjee*** reported in *(1997) 5 SCC 30,* it is submitted that looking to the averments in the complaint, clause (C) of Section 178 is attracted, therefore, it is requested to dismiss the present application.

5. Mr.Goswami, learned Advocate has relied upon the decision of the Hon'ble Supreme Court in the case of ***Trisuns Chemicals Industry v/s. Rajesh Agarwal and Ors.*** reported in *(1999) 8 SCC 686* and relying upon the said decision, it is submitted that as held by the Hon'ble Supreme Court quashment by High Court of complaint on the ground that Magistrate who took cognizance having no territorial jurisdiction to try that case is improper and premature. It is submitted that as held by the Hon'ble Supreme Court power of Judicial Magistrate to take cognizance is not impaired by territorial restrictions. It is further submitted that even otherwise considering various provisions of Cr.P.C. a complaint can be filed and registered at any Police Station and it can be investigated by any Police Officer where the complaint is filed. After investigation is concluded if the I.O. is of the opinion that jurisdiction vested with another J.M.F.C., he may send the report to the Magistrate having territorial jurisdiction. However, I.O., should not be restrained from further investigating the FIR and therefore, it is requested to dismiss the present petition. Shri. M.R.Mengdey, learned APP has adopted

the submission made on behalf of the original complainant and submitted that in the facts and circumstances of the case and averments in the complaint, FIR is not required to be quashed and/or transferred to the Police Station at Rajkot and this is not a stage at which question with regard to territorial jurisdiction is to be considered. Therefore, it is requested to dismiss the present application.

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. At the outset it is required to be noted that at present FIR is at the stage of investigation by the concerned Investigating Officer / Police Officer, Vejalpur Police Station and at that stage the petitioners have approached before this Court under Section 482 of the Cr.P.C. to quash the FIR submitting that no cause of action has arisen within the local limits of Vejalpur Police Station. Mr.Nanavati, learned Senior Advocate appearing on behalf of the petitioners has heavily relied upon the decision of the Hon'ble Supreme Court in the case of ***Y.Abraham***

Ajith (supra) and ***Sujata Mukherjee (Smt.)*** (supra) and ***Satvinder Kaur (supra)*** . On the other hand, it is the contention on behalf of the respondents that apart from the fact, even the allegations in the complaint do constitute offences and part cause of action has arisen within the local limit of Vejalpur Police Station. Even otherwise, FIR is not required to be quashed at this stage in exercise of powers under Section 482 of the Cr.P.C. and to restrain the Police Officer from investigating cognizance offences. Learned Advocate appearing on behalf of the respondent – original complainant has relied upon the decision of the Hon'ble Supreme Court in the case of ***Satvinder Kaur (supra).*** Therefore, the crucial question is whether at what stage the question with regard to territorial jurisdiction is required to be considered and whether FIR / complaint is required to be quashed and set aside in exercise of powers under Section 482 of the Cr.P.C., when the same is at the stage of investigation by the concerned Investigating Officer. Identical question came to be considered by the Hon'ble Supreme Court in the case of ***Satvinder Kaur (supra)*** and after considering the scheme of Code of Criminal Procedure the Hon'ble Supreme Court has set

aside the order passed by the Delhi High Court quashing the FIR under Section 482 of the Cr.P.C. on the ground that Delhi Police Station had no territorial jurisdiction to investigate the offences. The Hon'ble Supreme Court in the said decision has observed and held that any Police Officer has statutory authority under Section 156 of the Cr.P.C. to investigate any cognizable case for which FIR is lodged and at the stage of investigation, there is no question of interference under Section 482 of the Cr.P.C. on the ground that the investigating officer has no territorial jurisdiction. It is also observed by the Hon'ble Supreme Court that after investigation is over, if the investigating officer arrives at the conclusion that the cause of action for lodging the FIR has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly under Section 170 of Cr.P.C. and to forward the case to the Magistrate empowered to take cognizance of the offence. In Para 10 of the said decision, the Hon'ble Supreme Court has observed as under:

> *“10. It is true that territorial jurisdiction also is prescribed under sub-section (1) to the extent that the officer can investigate any*

cognizable case which a Court having jurisdiction over the local area within the limits of such police station would have power to inquire into or try under the provisions of Chapter XIII. However, sub-section (2) makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168, 169 and 170. Section 170 specifically provides that if, upon an investigation, it appears to the officer-in-charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, forward the accused under custody to a Magistrate, empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the Investigating Officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then F.I.R. can be forwarded to the police station having jurisdiction over the area in which crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it."

In another decision in the case of ***Trisuns Chemicals Industry (supra)*** the Hon'ble Supreme Court in para Nos. 11 to 14 has observed and held as under :

"11. It is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. Chapter XIII of the Code relates to jurisdiction of the criminal Courts "in enquiries and trials." That chapter contains provisions regarding the place where the enquiry and trial

are to take place. Section 177 says that "every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed." But Section 179 says that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the place of enquiry and trial can as well be in a Court "within whose local jurisdiction such thing has been done or such consequence has ensued". It cannot be overlooked that the said provisions do not trammel the powers of any Court to take cognizance of the offence. The power of the Court to take cognizance of the offence is laid in Section 190 of the Code. Sub-sections (1) and (2) read thus :
"(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-sec. (2), may take cognizance of any offence -
(a) Upon receiving a complaint of facts which constitute such offence;
(b) Upon a police report of such facts;
(c) Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-sec. (1) of such offences as are within his competence to inquire into or try."

12. Section 193 imposes a restriction on the Court of Session to take cognizance of any offence as a Court of original jurisdiction. But "any" Magistrate of the first class has the power to take cognizance of any offence, no matter that the offence was committed within his jurisdiction or not.

13. The only restriction contained in Section 190 is that the power to take cognizance is "subject to the provisions of this Chapter." There are 9 Sections in Chapter XIV most of which contain one or other restriction imposed on the power of a first class magistrate in taking cognizance of an offence. But none of them incorporates any curtailment on such powers in relation to

territorial barrier. In the corresponding provision in the old Code of Criminal Procedure (1898) the commencing words were like these : "Except as hereinafter provided...." Those words are now replaced by "Subject to the provisions of this chapter...." Therefore, when there is nothing in chapter XIV of the Code to impair the power of a judicial magistrate of first class taking cognizance of the offence on the strength of any territorial reason it is impermissible to deprive such a magistrate of the power to take cognizance of an offence of course, in certain special enactments special provisions are incorporated for restricting the power of taking cognizance of offences falling under such acts. But such provisions are protected by non obstante clauses. Any way that is a different matter.

14. The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the Court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier.

8. Now considering aforesaid two decisions, the contention on behalf of the petitioner to quash the complaint / FIR at the threshold on the ground that Vejalpur Police Station has no territorial jurisdiction cannot be accepted. To quash the complaint at this stage would be restraining the Police Officer from investigating and taking

cognizance of the offence which is not permissible and would be contrary to the scheme of Code of Criminal Procedure.

So far as the decision relied upon on behalf of the petitioner in the case of ***Y.Abraham Ajith (supra)*** is concerned, it is required to be noted that in the said case after investigation, charge-sheet was filed by the Police and learned Magistrate took cognizance and it was found that as even no part cause of action arose at Chennai, therefore, concerned Magistrate had no jurisdiction to deal with the matter and the proceedings were quashed. The complaint was returned to the complainant so as to enable her to file same in the appropriate Court having jurisdiction. Therefore, in the said case proceeding were at post cognizance stage and after the charge-sheet was filed. Similarly, also in the case of ***Manish Ratan and others V/s. State of M.P. and Another*** reported in *(2007) 1 SCC 262* is concerned, it is required to be noted that the Hon'ble Supreme Court had in that case exercised jurisdiction under Article 142 of the Constitution of India and transfered the case pending in the Court of Chief Judicial

Magistrate, Datia to the Chief Judicial Magistrate, Jabalpur. Therefore, this decision is not helpful to the petitioner.

Even otherwise as stated above, considering the averments and allegations in the complaint, it can be said that part cause of action had arisen within territorial jurisdiction of Vejalpur Police Station. As stated above, concerned Police Officer of the Vejalpur Police Station is not required to be restrained from further investigating the case. After investigation if ultimately, it is found by the concerned Police Officer of the Vejalpur Police Station that case is made out and charge-sheet / report is to be submitted, in that case, he may submit the charge-sheet before the Magistrate having territorial jurisdiction. If charge-sheet is filed before the Magistrate having territorial jurisdiction within Vejalpur Police Station area, then concerned Magistrate still can consider the question with regard to territorial jurisdiction before taking cognizance and if the concerned Magistrate is of the opinion that he has no jurisdiction to try the case, he may transfer the case to the Magistrate having territorial

jurisdiction.

9. Under the circumstances, certainly FIR is not required to be quashed and set aside on the ground that Police Station with whom / FIR is lodged has no territorial jurisdiction.

10. For the reasons stated above, the prayer of the petitioner to quash the FIR in question on the ground that Vejalpur Police Station has no territorial jurisdiction and no cause of action has arisen within Vejalpur Police Station cannot be accepted. The present application is required to be dismissed and accordingly it is dismissed. Notice discharged. Ad – interim relief, if any, stands vacated forthwith.

[M.R.Shah, J.]

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